



OFFICE OF RACIAL EQUITY AND SOCIAL JUSTICE

Marc Elrich
County Executive

Tiffany Ward
Director and Chief Equity Officer

MEMORANDUM

February 8, 2023

To: Jennifer Bryant, Director
Office of Management and Budget

From: Tiffany Ward, Director
Office of Racial Equity and Social Justice 

Re: Racial Equity Impact Assessment (REIA) for Supplemental Appropriation (SA) #23-20 – Amendment to the FY23-28 Capital Improvements Program for Lactation Rooms in County Buildings (No.0362310)

- I. **FINDING:** The Office of Racial Equity and Social Justice (ORESJ) is unable to determine whether Supplemental Appropriation #23-20 – *Amendment to the FY23-28 Capital Improvements Program for Lactation Rooms in County Buildings (No.0362310)* – will advance racial equity and social justice in Montgomery County. ORESJ’s finding aligns with the Office of Legislative Oversight’s (OLO) assessment detailed in their Racial Equity and Social Justice (RESJ) Impact Statement¹ of Bill 11-22,² which CIP P362310³ implements.

OLO asserts that County employment data disaggregated by race and ethnicity detailing where women and those expressing milk is needed to provide a more definitive assessment regarding Bill 11-22. This data is especially needed as Bill 11-22 states that warehouse and field-based positions are exempt from providing dedicated lactation rooms, or that such positions make the use of lactation rooms impractical. Should lactating persons identifying as Black, Indigenous, or People of Color (BIPOC) be concentrated in such positions, any advancements related to mitigating inequities in breast/chest feeding amongst these groups

¹ Bonner-Tompkins, E. & Peña, J. *Racial Equity and Social Justice (RESJ) Impact Statement, Office of Legislative Oversight, BILL 11-22: Buildings – Lactation Rooms in County Buildings – Required*. 2022. Available at: <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/Bill11-22.pdf>

² County Council for Montgomery County, Maryland. *Bill No. 11-22*. 2022. Available at: https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2752_1_23701_Bill_11-22_Signed_20220808.pdf

³ Montgomery County, MD Capital Budget. *Lactation Rooms in County Buildings*. 2023. Available at: <https://apps.montgomerycountymd.gov/BASISCAPITAL/Common/Project.aspx?ID=P362310>

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may be rendered moot. In order to address equity impacts moving forward, ORESJ recommends that the Montgomery County Government, Department of General Services (DGS) consider the following:

- What racial disparities or inequities in Montgomery County does this project seek to reduce or eliminate?
- How does this project address the racial disparities and inequities you described?
- Does this project (including its development, construction, or implementation) have the potential to create any unintended consequences?

II. **BACKGROUND**: The purpose of Supplemental Appropriation #23-20 – *Amendment to the FY23-28 Capital Improvements Program for Lactation Rooms in County Buildings (No.0362310)* – is to implement the requirements of Bill 11-22 – *Lactation Rooms in County Buildings*. The Bill requires DGS to provide at least one lactation room for County employees in each existing County building – be they leased or owned. These rooms must include a sink with running water and plumbing systems. If a sink with running water and plumbing systems cannot be provided, the lactation room must have nearby access to running water. Should DGS determine that a county building does not have a room that could be repurposed as a lactation room at a reasonable cost, DGS will consider installing or creating a space for a portable lactation room or station.⁴

The initially requested appropriation will fund an assessment of all in-scope County facilities per Bill 11-22. DGS will survey all County facilities to determine which are impacted by the Bill and the scope of modification required to satisfy the requirements of the Bill. These facilities **exclude** buildings that: 1) are solely used as a warehouse; 2) are primarily used for archives; and 3) would require new construction to create a lactation room and the cost of such construction is unfeasible.⁵ DGS will then report its findings, outcomes, and progress of the assessment to the County Council as required under the legislation.⁶ Once DGS completes its assessment and survey of all applicable County buildings for the inclusion of a lactation room, it will determine the costs and request funding required to retrofit existing space or alternatively, install or create a space for a portable lactation room or station. This will include funding for contractor and staff time that will be required to support the retrofit of existing space and also include the planning, design, and supervision of the project.

III. **ANALYSIS OF CIP PROJECTS THROUGH THE LENS OF RACE EQUITY**: ORESJ developed a Capital Improvements Program Budget Equity Tool (CIP BET) and Guidance

⁴ Ibid.

⁵ County Council for Montgomery County, Maryland. *Bill No. 11-22*. 2022. Available at: https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2752_1_23701_Bill_11-22_Signed_20220808.pdf

⁶ Montgomery County, MD Capital Budget. *Lactation Rooms in County Buildings*. 2023. Available at: <https://apps.montgomerycountymd.gov/BASISCAPITAL/Common/Project.aspx?ID=P362310>

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Manual⁷ to help stakeholders in Montgomery County incorporate a racial equity lens into CIP project development and resource decisions. Best practices for using a racial equity tool, such as the CIP BET, suggest that the tool should be used early and often in project development and involve a diverse set of project stakeholders—including community members and intended beneficiaries of the program.

Bill 11-22 was enacted on July 26, 2022, and became effective November 7, 2022. Supplemental information accompanying this funding request cites OLO's findings that given the percentage of women employees in the County that are BIPOC, BIPOC women are likely to accrue greater benefits from Bill 11-22 than White women employees⁸, however, such a finding is contingent on more granular County employment data that is not currently available. Overall, the Bill primarily seeks to create consistency in County employees' access to lactation rooms, if feasible, and to extend break time support for parents seeking to express milk beyond their nursing child's first birthday.⁹ As such, it is unlikely that CIP P362310 – like the legislation it implements – considered a racial equity lens when assessing the project's need or impact as this was not prioritized in the development of Bill 11-22. While there may be limited opportunities to identify project changes that may support the reduction of racial disparities and inequities within the project – as these were not considered during the design – using ORESJ's CIP BET as a framework, we offer several observations for consideration:

What racial disparities or inequities in Montgomery County does this project seek to reduce or eliminate?

This project does not explicitly target a specific racial disparity in the County but instead seeks to support all lactating County employees by providing them with a designated space within County buildings to do so. OLO's assessment of full-time County employment data disaggregated by gender, age, and race however finds that absent data regarding where these employees work (in office settings, field settings, warehouses, etc.), BIPOC women between the ages of 20 to 45 are more likely to accrue greater benefits compared to their White counterparts related to the implementation of Bill 11-22, as they account for a larger share of the workforce.¹⁰ Black mothers in particular stand to gain the greatest benefits as national data shows higher labor force participation rates amongst this group.¹¹ These findings suggest that implementation of the project could serve to reduce racial disparities

⁷ The Office of Racial Equity and Social Justice. *Guidance Manual: FY24 Capital Improvements Program Budget Equity Tool*. 2022. Available at:

https://www.montgomerycountymd.gov/ORE/Resources/Files/CIP_EquityTool_101322_PS2.pdf

⁸ Bonner-Tompkins, E. & Peña, J. *Racial Equity and Social Justice (RESJ) Impact Statement, Office of Legislative Oversight, BILL 11-22: Buildings – Lactation Rooms in County Buildings – Required*. 2022. Available at:

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/Bill11-22.pdf>

⁹ Ibid.

¹⁰ Ibid.

¹¹ Roux, M. *5 Facts About Black Women in the Labor Force*. 2021. Available at: <https://blog.dol.gov/2021/08/03/5-facts-about-black-women-in-the-labor-force>

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in nursing initiation and continuation that would derive additional health benefits for BIPOC parents and their children¹² as research shows that current workplace breastfeeding policies tend to benefit White, affluent, and highly educated mothers.¹³ Of note, the majority of women full-time employees in the County are over 45 years of age, suggesting that implementation of the Bill is most likely to impact a smaller subset of employees.¹⁴

How does this project address the racial disparities and inequities you described?

As noted by OLO, implementation of the project builds on current federal requirements laid out in the Affordable Care Act (ACA) – requiring workplaces to provide a private, functional, and usable space that is not a bathroom for employees to express milk¹⁵ by creating a permanent lactation space.¹⁶ While addressing racial disparities and inequities are not highlighted as key tenets of the funding request, available County employment data suggests that lactating BIPOC employees have the potential to benefit the greatest from Bill 11-22. This assertion is limited as more granular employment data is needed to assess Bill's true impact. As previously mentioned, certain County facilities are excluded from implementing the bill's requirements. If BIPOC women are concentrated in occupations exempt from providing dedicated lactation rooms, potential benefits to this group could be minimal. The same can be surmised for part-time and contract County employees as they are not addressed in the Bill.

Does this project (including its development, construction, or implementation) have the potential to create any unintended consequences?

Due to the exclusion of certain buildings required to create dedicated lactation rooms for their employees, data suggests that if implemented as currently directed, office-based staff will be the primary beneficiaries of Bill 11-22. Because the race, ethnicity, and gender demographics of employees with work sites located in County office buildings remains unknown, it is difficult to ascertain potential benefits to BIPOC employees. Without this information, at best, ORESJ believes implementation of Bill 11-22 could maintain the

¹² Bonner-Tompkins, E. & Peña, J. *Racial Equity and Social Justice (RESJ) Impact Statement, Office of Legislative Oversight, BILL 11-22: Buildings – Lactation Rooms in County Buildings – Required*. 2022. Available at: <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/Bill11-22.pdf>

¹³ National Immunization Survey, Centers for Disease Control and Prevention, Department of Health and Human Services. *Rates of Any and Exclusive Breastfeeding by Sociodemographic Characteristic Among Children Born in 2019 (Percentage +/- half 95% Confidence Interval)*. Available at: https://www.cdc.gov/breastfeeding/data/nis_data/data-files/2019/rates-any-exclusive-bf-socio-dem-2019.html

¹⁴ Bonner-Tompkins, E. & Peña, J. *Racial Equity and Social Justice (RESJ) Impact Statement, Office of Legislative Oversight, BILL 11-22: Buildings – Lactation Rooms in County Buildings – Required*. 2022. Available at: <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/Bill11-22.pdf>

¹⁵ U.S. Department of Labor. *Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work*. 2023. Available at: <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers>

¹⁶ Bonner-Tompkins, E. & Peña, J. *Racial Equity and Social Justice (RESJ) Impact Statement, Office of Legislative Oversight, BILL 11-22: Buildings – Lactation Rooms in County Buildings – Required*. 2022. Available at: <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/Bill11-22.pdf>

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current status quo. As such, we recommend: the collection of such data so as to gauge the full impact of the Bill; prioritizing the creation of lactation rooms for County employees working outside of standard office settings as they face the greatest barriers to accessing spaces to express milk; and meaningfully engaging with lactating County employees that the current legislation leaves out.

cc: Dr. James Bridgers, Deputy Health Officer, Department of Health and Human Services
David Dise, Director, Department of General Services
Ken Hartman, Director, Strategic Partnerships, Office of the County Executive